

TOMMY R. BEWLEY,)
)
Petitioner,)
)
vs.) Case No. 4:05CV1778 CDP
)
DAVE DORMIRE,)
)
Respondent.)

This matter is before me on the petition of Tommy R. Bewley for a writ of habeas corpus under 28 U.S.C. § 2254. I referred this matter to United States Magistrate Judge David D. Noce for a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1). On March 6, 2008, Judge Noce filed his recommendation that the petitioner's habeas petition should be denied.

Petitioner objects to the Report and Recommendation. In his objections, petitioner argues that Judge Noce improperly denied his motion to appoint counsel to represent him in this matter because Petitioner states that he is illiterate and cannot read above the third grade level. His motion for appointment of

counsel did not indicate that he was illiterate.¹ Petitioner does not have either a constitutional or a statutory right to counsel in habeas proceedings. Morris v. Dormire, 217 F.3d 556, 558(8th Cir. 2000). In denying petitioner's motion for appointment of counsel, Judge Noce analyzed the record as it stood before him and properly considered "the factual and legal complexity of the case, and the petitioner's ability both to investigate and to articulate his claims without court appointed counsel." Id. at 558-59.

Other than Judge Noce's failure to appoint counsel, petitioner does not make any substantive objections to the report and recommendation. I have conducted a de novo review of the entire file, including all matters relevant to the petition. After careful consideration, I will adopt and sustain the thorough reasoning of Magistrate Judge Noce and will deny petitioner's habeas petition.

I agree with Judge Noce that several of petitioner's claims are procedurally barred. The claims that are not procedurally barred are ground 1 and ground 3 with regard to Delberta Taylor. I also agree with Judge Noce that the state court determination on the merits of those claims was not "contrary to" or an "unreasonable application of" clearly established federal law. 28 U.S.C. §

¹The record did contain a letter by another inmate that stated that Bewley was illiterate and able to read only at the second or third grade level.

2254(d)(1). I also agree that petitioner has not shown that the state court determination “resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.” 28 U.S.C. § 2254(d)(2). Because Judge Noce correctly decided petitioner’s claims, I am overruling petitioner’s objections to the Report and Recommendation and will deny habeas relief for the reasons stated in the Report and Recommendation.

I have also considered whether to issue a certificate of appealability. To grant a certificate of appealability, the Court must find a substantial showing of the denial of a federal constitutional right. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997) (citing Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994)).

Petitioner has not made such a showing. Therefore, I will not issue a certificate of appealability.

Accordingly,


IT IS HEREBY ORDERED that the Report and Recommendation filed on March 6, 2008 [#38] is adopted and sustained in its entirety.

IT IS FURTHER ORDERED that petitioner's objections to the Report and Recommendation [#40] are overruled in their entirety.

IT IS FURTHER ORDERED that petitioner Tommy R. Bewley's Petition for Writ of Habeas Corpus [#24] is **DENIED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

A separate judgment in accordance with this Memorandum and Order is entered this same day.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 30th day of April, 2008.